

**SENIOR SECURED OPERATING COMPANY CREDIT FACILITIES**  
**Statement of Terms and Conditions**

**October 7, 2002**

Illinois Electric Transmission Company, LLC (“OpCo”), an operating company wholly owned by Illinois Transco Holdings, L.P. (“HoldCo”), a partnership formed by a subsidiary of Trans-Elect, Inc., as general partner, and a subsidiary of AIG Highstar Capital, L.P., as limited partner (collectively, the “Specified Equity Investors”), has entered into an Asset Purchase Agreement, dated as of October 7, 2002 (the “Asset Purchase Agreement”), with Illinois Power Company (“Illinois Power”) pursuant to which OpCo will acquire and own (the “Acquisition”) the electric transmission assets (the “Acquired Assets”) currently owned by Illinois Power for a purchase price of approximately \$239,000,000 in cash. The sources and uses of funds needed to effect the Acquisition and to pay the fees, costs and expenses in connection therewith will be approximately as set forth on Annex II hereto. Set forth below is a statement of terms and conditions for senior secured credit facilities to be made available to OpCo (on the terms and subject to the conditions set forth below and in the Commitment Letter to which this Exhibit A is attached) to be used to finance a portion of the consideration with respect to the Acquisition and fund a portion of ongoing capital expenditures and working capital.

**I. Parties**

Borrower:	Illinois Electric Transmission Company, LLC (the “ <u>Borrower</u> ”).
Guarantors:	Each of the Borrower’s direct and indirect subsidiaries, if any, from time to time (the “ <u>Guarantors</u> ”; and, together with the Borrower, the “ <u>Loan Parties</u> ”).
Joint Lead Arrangers:	WestLB AG, New York Branch (“ <u>WestLB</u> ”), and Société Générale (“ <u>SG</u> ”; and, together with WestLB, in such capacity, the “ <u>Joint Lead Arrangers</u> ”).
Sole Bookrunner:	WestLB.
Administrative Agent:	WestLB (in such capacity, the “ <u>Administrative Agent</u> ”).
Syndication Agent:	SG (in such capacity, the “ <u>Syndication Agent</u> ”; and, together with the Administrative Agent, the “ <u>Agents</u> ”).
Lenders:	A syndicate of banks, financial institutions and other entities, including WestLB and SG, arranged by the Joint Lead Arrangers (collectively, the “ <u>Lenders</u> ”).

**II. Types and Amounts of Facilities**

**A. Facilities**

Senior secured credit facilities in an aggregate principal amount of up to US \$174,500,000, available upon the

conditions hereinafter set forth and to consist of:

- (i) an up to \$154,500,000 five-year term loan;
- (ii) a \$15,000,000 five-year capital expenditures facility;  
and
- (iii) a \$5,000,000 five-year revolving credit facility.

**B. Term Facility**

Type and Amount of the Facility:

A five-year term loan facility (the “Term Facility”) in an aggregate principal amount equal to \$135,500,000 (the loans thereunder, the “Term Loans”); provided that, if, in accordance with the terms of the Asset Purchase Agreement, the purchase price for the Acquisition is adjusted, the amount of the Term Facility will be adjusted to an amount that is consistent with the “Certain Conditions” set forth in Part V below (but in no event shall the principal amount of the Term Facility be greater than \$154,500,000 and in no event shall the amount of the Term Facility, when added to the amount of the “Term Facility” (as defined and having the terms and conditions set forth in Exhibit B to the Commitment Letter and herein called the “HoldCo Term Facility”) be greater than \$218,000,000). The final maturity of the Term Loans shall be on the fifth anniversary of the Closing Date (as defined below).

Maturity Date

The fifth anniversary of the Closing Date (as defined below).

Availability:

The Term Loans shall be made in a single drawing on the Closing Date. Amounts of the Term Loans repaid or prepaid may not be reborrowed.

Purpose:

The proceeds of the Term Loans shall be used to finance a portion of the Acquisition and to pay related fees, costs and expenses.

Term Loan Amortization:

The Term Loans shall be repayable in 20 consecutive quarterly installments, commencing three months after the Closing Date and concluding on the maturity date, each of which shall be in an amount equal to 0.25% of the aggregate amount of Term Loans made on the Closing Date, in the case of the first 19 of such installments, and 95.25% of such amount of Term Loans, in the case of the final of such installments.

### **C. CapEx Facility**

Type and Amount of the Facility: A five-year revolving capital expenditures credit facility (the “CapEx Facility”; the commitments thereunder, the “CapEx Commitments”) in the amount of \$15,000,000 (the loans thereunder, the “CapEx Loans”).

Availability: The CapEx Facility shall be available on a revolving basis during the period commencing on the Closing Date and ending on the fifth anniversary of the Closing Date (the “CapEx Facility Termination Date”).

Maturity: The CapEx Facility Termination Date

Purpose: The proceeds of the CapEx Loans shall be used to finance capital expenditures for assets that will be included in the Borrower’s rate base.

### **D. Revolving Facility**

Type and Amount of Facility: A five-year revolving credit facility (the “Revolving Facility” and, together with the Term Facility and the CapEx Facility, the “Credit Facilities”; the commitments thereunder, the “Revolving Commitments”) in the amount of \$5,000,000 (the loans thereunder, the “Revolving Loans”; and, together with the Term Loans and the CapEx Loans, the “Loans”).

Availability: The Revolving Facility shall be available on a revolving basis during the period commencing on the Closing Date and ending on the fifth anniversary of the Closing Date (the “Revolving Termination Date”).

Letters of Credit: The Revolving Facility will be available for the issuance of letters of credit by a Lender or Lenders (in such capacity, the “Issuing Lender(s)”) designated by the Borrower. No letter of credit shall have an expiration date after the date which is five business days prior to the Revolving Termination Date. Any such letter of credit will reduce availability under the Revolving Facility on a dollar-for-dollar basis. Any letter of credit may provide for the renewal thereof subject to the restriction in the second previous sentence. Lenders will be deemed to have automatic pro rata participations in each letter of credit. Drawings will bear interest at the ABR and will be reimbursable by means of advances under the Revolving Facility.

Maturity: The Revolving Termination Date.

Purpose:	The proceeds of the Revolving Loans shall be used to finance the working capital needs and general corporate purposes of the Borrower and its subsidiaries.
Clean-Down:	The outstanding amount of the Revolving Facility will be required to be reduced to \$0 at least once during each calendar year prior to the Revolving Termination Date.

### **III. Certain Payment Provisions**

Fees and Interest Rates:	As set forth on Annex I.
Optional Prepayments and Commitment Reductions:	Loans may be prepaid and commitments may be reduced by the Borrower in minimum amounts to be agreed upon. Optional prepayments of the Term Loans shall be applied ratably to the respective installments thereof.
Mandatory Prepayments and Commitment Reductions:	<p>The following amounts shall be applied to prepay the Term Loans and CapEx Loans and reduce the unused CapEx Commitments and the Revolving Commitments:</p> <p>(a) 100% of the net proceeds of any incurrence of indebtedness after the Closing Date by the Borrower or any of its subsidiaries, subject to certain customary exceptions to be agreed upon; and</p> <p>(b) 100% of the net proceeds of any sale or other disposition (including as a result of casualty or condemnation) by the Borrower or any of its subsidiaries of any assets, except for the sale of inventory or obsolete or worn-out property in the ordinary course of business and subject to a minimum threshold amount and certain other customary exceptions (including capacity for reinvestment and the ability to replace damaged or condemned property) to be agreed upon.</p> <p>The amounts described above shall be applied, first, to prepay the Term Loans (to be applied to the installments thereof in inverse order of maturity), second, to reduce permanently the CapEx Commitments (with CapEx Loans being prepaid to the extent the aggregate amount thereof exceeds the CapEx Commitments as so reduced) and, third, to reduce permanently the Revolving Commitments (with extensions of credit thereunder being prepaid to the extent the aggregate amount thereof exceeds the Revolving Commitments as so reduced).</p> <p>The Borrower may, in lieu of making any mandatory prepayment required by the foregoing paragraphs, place an amount equal to the required prepayment in a cash collateral account under the control of the Administrative Agent (the</p>

“Prepayment Account”), from which account such mandatory prepayment shall be made on the next applicable interest period rollover date without further action or instruction of the Borrower.

#### **IV. Collateral**

The obligations of each Loan Party in respect of the Credit Facilities shall be secured by a perfected first priority lien on all of its tangible and intangible assets (including, without limitation, intellectual property, real property, material contracts, the Prepayment Account and the Excess Cash Flow Account and all funds and other property, if any, from time to time credited to such Accounts, and all of the capital stock of (or other equity interests in) such Loan Party’s present and future direct and indirect subsidiaries), other than any assets with respect to which the Joint Lead Arrangers determine that the costs of obtaining a security interest are excessive in relation to the value afforded thereby.

If and so long as any of the events described below in clauses (a) through (d) of this paragraph shall have occurred and be continuing with respect to Illinois Power or PJM (unless the Borrower has demonstrated to the reasonable satisfaction of the Required Lenders that such event could not reasonably be expected to result in an impairment of payments owed to the Borrower), all excess cash flow of the Borrower (to be defined to deduct dividends paid to HoldCo that are used by HoldCo to pay its debt service and to make distributions to the partners of HoldCo in amounts sufficient to pay income taxes arising out of their respective shares of the income of HoldCo (such amounts to be measured based on a deemed rate of taxation to be agreed)) will be required to be deposited in a cash collateral account held by or on behalf of (and under the control of) the Administrative Agent (the “Excess Cash Flow Account”): (a) a payment default or acceleration of material indebtedness, (b) the commencement of bankruptcy, reorganization or other similar administrative or judicial proceedings, (c) the failure to make the full amount of any undisputed payment required to be made by (i) PJM to the Borrower in respect of transmission or related services or (ii) Illinois Power to PJM under the Network Integration Transmission Service Agreement (the “NITSA”) or (d) the commencement by PJM of a proceeding with FERC to cause Illinois Power’s membership in PJM to be terminated (which event shall be deemed to continue until FERC shall have denied PJM’s request, PJM shall have withdrawn its request, or Illinois Power shall have become a member of a different RTO reasonably acceptable to the Required Lenders (as defined below) on terms and conditions reasonably satisfactory to the Required Lenders). Amounts held in the Excess Cash Flow Account may be applied at the option of the Borrower to prepay the Loans and reduce

Commitments (in the order described under “Mandatory Prepayments and Commitment Reductions” above) and may be so applied at the option of the Required Lenders if an event of default shall occur. If any event described in clauses (a) through (d) above occurs and is continuing after amounts have been collected in the Excess Cash Flow Account for a period of twelve months since the last such event, then, if (i) all required payments from Illinois Power to PJM and from PJM to the Borrower have continued uninterrupted on a complete and timely basis since the occurrence of the last such event, and (ii) there has been no Material Adverse Change (as defined below) or event of default, then the Borrower shall not be required to deposit additional amounts in the Excess Cash Flow Account, unless and until any additional event as described in clauses (a) through (d) shall occur. Upon the termination of the Borrower’s obligations to deposit additional amounts in to the Excess Cash Flow Account pursuant to the preceding sentence, all Excess Cash Flow that has been on deposit for more than twelve months shall be released to the Borrower. Amounts remaining in the Excess Cash Flow Account when all events described in clauses (a) through (d) of this paragraph shall no longer be continuing (which, in the case of a bankruptcy of Illinois Power, shall be deemed to occur when the NITSA is assumed by Illinois Power with the approval of the applicable bankruptcy court) shall be released to the Borrower.

## **V. Certain Conditions**

Initial Conditions to Closing:

The availability of the Credit Facilities shall be conditioned upon the satisfaction on or before the date which is nine months after the date of the Commitment Letter to which this Statement of Terms and Conditions is attached (the “Commitment Letter”) of conditions precedent usual for facilities and transactions of this type, including, without limitation, the conditions set forth below and customary corporate and document delivery requirements (the date upon which all such conditions precedent shall be satisfied, the “Closing Date”):

(a) The Loan Parties shall have executed and delivered definitive Senior Credit Documentation (as hereinafter defined), in form and substance reasonably satisfactory to the Joint Lead Arrangers.

(b) HoldCo shall have received cash equity capital contributions (“Equity Contributions”) from the Specified Equity Investors and other equity investors, if any, satisfactory to the Joint Lead Arrangers (collectively, the “Equity Investors”), on terms and conditions reasonably

satisfactory to the Joint Lead Arrangers (provided that no less than 51% of the Equity Contributions shall have been contributed by AIG Highstar), in an aggregate amount equal to at least \$60,500,000, unless the Projections delivered pursuant to paragraph (i) below demonstrate base case minimum and average HoldCo consolidated fixed charge coverage ratios of 1.55:1.00 and 1.64:1.00, respectively, in which case the aggregate amount of the Equity Contributions shall equal at least 20% of the sum of (x) the purchase price of the Acquisition, (y) the amount of the CapEx Facility and the Revolving Facility and (z) the aggregate amount of fees, costs and expenses to be incurred by the Borrower and HoldCo in connection with the Acquisition and the financing thereof (the “Transaction Expenses”).

(c) HoldCo shall have borrowed under the HoldCo Term Facility in an amount which, when added to (i) the amount of the Equity Contributions from the Equity Investors described in paragraph (b) above and (ii) the aggregate amount of the Term Facility, is at least equal to (x) the purchase price of the Acquisition plus (y) Transaction Expenses, and HoldCo shall have contributed all such amounts to the Borrower as common equity to fund, in part, the purchase price of the Acquisition.

(d) The Acquisition shall have been consummated in accordance with applicable law and the Asset Purchase Agreement, and the Borrower and Illinois Power shall have become members of PJM on terms reasonably satisfactory to the Joint Lead Arrangers. No provision of the Asset Purchase Agreement (including the Schedules and Exhibits thereto) shall have been waived, amended, supplemented or otherwise modified in any materially adverse respect without approval of the Joint Lead Arrangers, provided that (i) any amendment to any Schedule to the Asset Purchase Agreement effected in accordance with Section 7.1 thereof shall be deemed to have been approved by the Joint Lead Arrangers if, in accordance with the Asset Purchase Agreement, the Borrower has no right to terminate such Agreement as a result thereof and (ii) the failure by the Borrower to exercise any right of termination available to it under the Asset Purchase Agreement shall be deemed to constitute a material adverse modification thereto. The limited partnership agreement of HoldCo and the operating agreement of the Borrower shall have terms and conditions satisfactory to the Joint Lead Arrangers. The “Operational Documents”, as such term is defined in the Asset Purchase Agreement (the “Operational Documents”), shall have been executed and delivered by the parties thereto in the forms attached to the Asset Purchase Agreement.

(e) All material governmental and third party approvals

necessary in connection with the Acquisition, the financing contemplated hereby and the continuing operations of the Borrower and its subsidiaries (including those related to the membership of the Borrower in PJM) shall have been obtained on terms satisfactory to the Joint Lead Arrangers and shall be in full force and effect and not subject to appeal, rehearing or judicial or administrative proceeding (unless the Joint Lead Arrangers are satisfied that there is no reasonable likelihood that the applicable approval would be withdrawn or modified upon such appeal, rehearing or other proceeding), including the "Approvals" listed in Section 7.3 of the Asset Purchase Agreement and including an order of the FERC in response to the Borrower's Section 203 and 205 application that, with respect to the matters specifically requested in the draft Section 203 and 205 application dated September 30, 2002, approves such requests and, with respect to all other matters covered by such order, is on terms and conditions satisfactory to the Joint Lead Arrangers). The Joint Lead Arrangers shall be satisfied that the capital structure of the Borrower on the Closing Date will be consistent with the FERC order referred to above and all other applicable governmental and third party approvals.

(f) The Lenders shall have received satisfactory (i) audited consolidated financial statements of Trans-Elect, Inc. and AIG Highstar Capital, L.P. for the two most recent fiscal years for which such statements are available and (ii) unaudited interim consolidated financial statements of Trans-Elect, Inc. and AIG Highstar Capital, L.P. for each quarterly period ended after the most recent period referred to in clause (i) as to which such financial statements are available, and such financial statements, in the case of the Trans-Elect, Inc. financial statements only, shall not reflect any adverse change in the consolidated financial condition of Trans-Elect, Inc. and its subsidiaries that could reasonably be expected to have a material adverse effect on its ability to perform its obligations under its management services agreement with the Borrower referred to in paragraph (r) below.

(g) The Lenders shall have received satisfactory (i) pro forma statements of income and cash flows of the "Business" (as defined in the Asset Purchase Agreement) for the twelve-month period ended December 31, 2001 and the six-month period ended June 30, 2002, as well as copies of the other financial information to be delivered by Illinois Power pursuant to Section 3.7 of the Asset Purchase Agreement and (ii) pro forma interim income and cash flow statements of the Business for each quarterly period ended after the most recent period referred to in clause (i) of this paragraph (g), and such statements shall not reflect any material adverse change in the

financial condition of the Business from what was reflected in the statements of income and cash flows or projections furnished to the Joint Lead Arrangers prior to the date of the Commitment Letter.

(h) The Lenders shall have received a satisfactory pro forma consolidated balance sheet of the Borrower and its subsidiaries prepared by PriceWaterhouse Coopers as of the Closing Date, after giving effect to the consummation of the Acquisition and the financings contemplated hereby.

(i) The Lenders shall have received satisfactory Projections of the Borrower and its subsidiaries on a quarterly basis through 2005 and thereafter on an annual basis through 2012, which Projections shall demonstrate base case (x) minimum and average fixed charge coverage ratios of 2.25:1.00 and 2.30:1.00, respectively, and (y) minimum and average EBITDA to interest ratios of at least 3.75:1.00 and 4.00:1.00, respectively (or (A) minimum and average fixed charge coverage ratios of 2.10:1.00 and 2.15:1.00, respectively, and (B) minimum and average EBITDA to interest ratios of 3.45:1.00 and 3.70:1.00, respectively, if the purchase price of the Acquisition is adjusted pursuant to Section 1.7 of the Asset Purchase Agreement), in each case for each period of four consecutive fiscal quarters or one year, as the case may be, included in such Projections for the first five years after the Closing Date, and (z) HoldCo consolidated debt to consolidated capitalization ratio at the end of the fifth year following the Closing Date of not more than 0.65:1.00.

(j) The Weighted Average Closing Date Swap Rate shall not exceed 4.50%, unless the Borrower shall have taken actions such that the minimum and average Fixed Charge Coverage Ratios and the minimum and average EBITDA to Interest Ratios in the Projections delivered pursuant to clause (i) above are greater than or equal to those ratios calculated in such Projections assuming an interest rate equal to 4.50%. This requirement will be superceded by any hedging program implemented by the Borrower and reasonably acceptable to the Joint Lead Arrangers. As used in this paragraph, the "Weighted Average Closing Date Swap Rate" shall equal  $(A+B)/C$  where "A" is the Hedged Amount multiplied by the Hedged Swap Rate, "B" is the Unhedged Amount multiplied by the 5 year US-dollar mid-market swap rate quoted on Bloomberg Page USSWAP5 at 10:00am New York Time on the day of closing, converted to a quarterly basis, and "C" is the Hedged Amount plus the Unhedged Amount; the "Hedged Amount" shall equal such amount of the Term Loans and HoldCo Term Loans as the Borrower and HoldCo shall, prior to the Closing Date, have hedged for the period from the

Closing Date until the fifth anniversary thereof; the “Hedged Swap Rate” shall be the swap rate at which the Hedged Amount has been hedged; and the “Unhedged Amount” shall equal the sum of the Term Loans and HoldCo Term Loans less the Hedged Amount.

(k) All actions required to perfect the Lenders’ lien on the collateral under the Credit Facilities shall have been completed, including, without limitation, all documentation necessary to allow the assignment of the Borrower’s interest in all material service contracts to the Administrative Agent for the benefit of the Lenders upon the exercise of remedies following an event of default.

(l) The Joint Lead Arrangers shall have received reports with respect to the condition of the Acquired Assets from PA Consulting Group and ABB, in form and substance reasonably satisfactory to the Joint Lead Arrangers.

(m) The Joint Lead Arrangers shall have received an insurance report as to the Borrower from Marsh USA Inc. in form and substance reasonably satisfactory to the Joint Lead Arrangers, and the Joint Lead Arrangers shall be satisfied that (i) the insurance programs to be maintained by the Borrower and its subsidiaries are with financially sound and reputable insurance companies, (ii) insurance is maintained on all property in at least such amounts and against at least such risks (but including in any event public liability) as are maintained by prudent utility operators with transmission systems similar to that of Illinois Power and (iii) in the case of casualty insurance covering transmission lines and related towers, poles and conductors, such insurance shall be no less favorable to the Borrower than that provided in the Aegis insurance term sheet delivered to the Joint Lead Arrangers prior to the date hereof.

(n) The Administrative Agent shall have received a certificate of the Borrower, reasonably satisfactory in form and substance to the Lenders, executed by an appropriate representative of the Borrower, that shall certify the solvency of the Borrower and its subsidiaries after giving effect to the Acquisition and the other transactions contemplated hereby.

(o) The Joint Lead Arrangers shall have received a real estate report and environmental audit from NSI Consulting, in form and substance reasonably satisfactory to the Joint Lead Arrangers, with respect to certain real property owned, operated or leased by the Borrower and its subsidiaries, which report and audit shall not in the reasonable opinion of the Joint Lead Arrangers reveal any condition which reasonably could

be expected to result in a material adverse change in the business, operations, property or condition (financial or otherwise) of the Borrower and its subsidiaries, taken as a whole.

(p) The Joint Lead Arrangers shall have received an engineering report with respect to the Acquired Assets from R.W. Beck, in form and substance reasonably satisfactory to the Joint Lead Arrangers, including with respect to environmental matters and a review of Borrower's financial model, updating their report covering the foregoing matters dated October 2002.

(q) The Lenders shall have received such legal opinions (including opinions (i) from counsel to the Borrower and its subsidiaries, (ii) delivered to Borrower by counsel to Illinois Power pursuant to the Asset Purchase Agreement, accompanied by reliance letters in favor of the Lenders, and (iii) from such special and local counsel as may be reasonably required by the Agents), documents and other instruments as are customary for transactions of this type or as they may reasonably request, all in form and substance satisfactory to them.

(r) The Borrower shall have obtained ratings for the Credit Facilities of BBB- or better from Standard & Poor's ("S&P") or Baa3 or better from Moody's Investment Services ("Moody's"), and if the Credit Facilities shall have such a rating from only one of such agencies, the other of such agencies shall have rated the Credit Facilities at least BB+ or Ba1, as applicable.

(s) The Borrower shall have entered into a management services agreement with Trans-Elect, Inc. or an affiliate thereof in form and substance reasonably satisfactory to the Joint Lead Arrangers.

(t) The Lenders, the Agents and the Joint Lead Arrangers shall have received all fees required to be paid, and all expenses for which invoices have been presented, on or before the Closing Date.

(u) If (i) Illinois Power's credit rating is below BB+ by S&P and Ba1 by Moody's or (ii) Illinois Power's gross tangible assets are less than \$200,000,000, Illinois Power shall have provided a letter or letters of credit in amounts satisfactory to the Joint Lead Arrangers from a bank acceptable to the Joint Lead Arrangers that supports the performance of any and all of Illinois Power's obligations under the Asset Purchase Agreement and the Operational

Documents (other than the NITSA) under which Illinois Power has ongoing payment obligations, in form and substance reasonably satisfactory to the Joint Lead Arrangers, or another form of credit support reasonably acceptable to the Joint Lead Arrangers, it being agreed that, in the case of the letter of credit supporting Asset Purchase Agreement obligations, an amount equal to or greater than \$10,000,000 will be satisfactory, and in the case of a letter of credit supporting obligations under any Operational Document, an amount equal or greater to two months' scheduled payments under such agreement will be satisfactory.

(v) (i) Neither PJM nor Illinois Power shall be in bankruptcy (or subject to any similar proceeding) or otherwise in material default under any of its material indebtedness or credit facilities and (ii) the Joint Lead Arrangers shall either (x) be satisfied that there is then no material likelihood of bankruptcy of Illinois Power or a payment default under any of its material indebtedness or credit facilities, or of a material default by Illinois Power under any other contract to which Illinois Power is a party involving goods and/or services in an aggregate amount in excess of \$50,000,000 or (y) have determined in good faith in their sole reasonable discretion that the matters described in clause (x) above will not prevent them from completing a Successful Syndication (as defined in the Commitment Letter) of the Credit Facilities (as defined in the Commitment Letter), prior to the Closing Date and such matters shall not, in fact, have prevented them from completing a Successful Syndication on the proposed closing date requested by the Borrower.

On-Going Conditions:

The making of each extension of credit shall be conditioned upon (a) the accuracy of all representations and warranties in the documentation (the "Senior Credit Documentation") with respect to the Credit Facilities (including, without limitation, the material adverse change and litigation representations) and (b) there being no default or event of default in existence at the time of, or after giving effect to the making of, such extension of credit. As used herein and in the Senior Credit Documentation a "material adverse change" shall mean any event, development or circumstance that has had or could reasonably be expected to have a material adverse effect on (i) the Acquisition or the Acquired Assets, (ii) the business, operations, property or condition (financial or otherwise) of the Borrower and its subsidiaries taken as a whole or (iii) the validity or enforceability of any of the Senior Credit Documentation or the rights and remedies of the Administrative Agent and the Lenders thereunder.

## **VI. Certain Documentation Matters**

The Senior Credit Documentation shall contain representations, warranties, covenants and events of default customary for financings of this type and other terms deemed appropriate by the Lenders, including, without limitation:

### **Representations and Warranties:**

Financial statements (including pro forma financial statements); absence of undisclosed liabilities; no material adverse change; corporate existence; compliance with law; organizational power and authority; enforceability of Senior Credit Documentation; no conflict with law or contractual obligations; no material litigation; no default; ownership of property; liens; intellectual property; no burdensome restrictions; taxes; Federal Reserve regulations; ERISA; Investment Company Act; Public Utility Holding Company Act; subsidiaries; environmental matters; solvency; labor matters; accuracy of disclosure; creation and perfection of liens.

### **Affirmative Covenants:**

Delivery of financial statements, reports, accountants' letters, annual budgets, officers' certificates and other information requested by the Lenders; payment of other obligations; continuation of business and maintenance of existence and material rights and privileges; compliance with laws and material contractual obligations; maintenance of property and insurance; maintenance of books and records; right of the Lenders to inspect property and books and records; notices of defaults, litigation and other material events; compliance with environmental and other laws; further assurances (including, without limitation, with respect to liens on after-acquired property); and agreement to obtain interest rate protection (not later than 60 days following the Closing Date) covering a notional amount equal to at least 50% of the sum of the aggregate principal amount of the Term Loans and "Term Loans" under the HoldCo Term Facility, and maintain such protection until the final maturity thereof on terms and conditions reasonably satisfactory to the Joint Lead Arrangers.

### **Financial Covenants:**

To include:

- (i) Minimum fixed charge coverage ratio of the Borrower, measured on a trailing 12-month basis, of at least 1.75:1.00 (or, if less, a ratio equal to (x) the actual minimum fixed charge coverage ratio reflected in the Projections delivered to the Joint Lead Arrangers pursuant to clause (i) of Section V above minus (y) 0.60:1.00);
- (ii) Minimum EBITDA to interest coverage ratio of the Borrower, measured on a trailing 12-month basis, of at least 2.50:1.00; and
- (iii) Maximum total debt to capitalization ratio of the Borrower, measured at the end of each fiscal quarter of no more than 60%.

Negative Covenants:

Limitations on: indebtedness; liens; guarantee obligations; mergers, consolidations, liquidations and dissolutions; sales of assets; leases; distributions and other payments in respect of equity (to be permitted if no event of default or unmatured event of default exists, or would exist after giving effect to such distribution, and if no event described in the second paragraph under "Collateral" above shall have occurred and be continuing; provided that if at any time the only event of default then existing is that resulting from a failure to comply with the covenant described in clause (iii) under "Financial Covenants" above, the Borrower will be permitted to pay dividends to HoldCo that are used to by HoldCo to pay its debt service); capital expenditures; investments, loans and advances; transactions with affiliates; sale-leasebacks; changes in fiscal year; negative pledge clauses and clauses restricting subsidiary distributions; changes in lines of business; and amendments or modifications to the Asset Purchase Agreement or any Operational Document which are materially adverse to the Borrower or the Lenders

Events of Default:

Nonpayment of principal when due; nonpayment of interest, fees or other amounts after a grace period to be agreed upon; material inaccuracy of representations and warranties; violation of covenants (subject, in the case of certain affirmative covenants, to a grace period to be agreed upon); cross-default to other indebtedness of the Loan Parties; bankruptcy events with respect to the Loan Parties; failure of PJM to pay any amount owing to the Borrower when due and the continuance of such failure for 60 days; the Borrower or Illinois Power ceasing to be a member of PJM unless the Borrower or Illinois Power, as the case may be, becomes a member of an RTO reasonably satisfactory to the Required Lenders on terms and conditions reasonably satisfactory to the Required Lenders; certain ERISA events; material judgments; actual or asserted invalidity of any guarantee, security

document or lien; termination or material default of certain material Operational Documents; changes in passive holding company status of HoldCo; a change in the FERC-approved rate structure that could reasonably be expected to have a Material Adverse Change; a change in the terms and conditions of PJM's credit, billing or accounting policies, or operating or other agreement provisions, affecting "socialization" of credit losses that could reasonably be expected to cause a Material Adverse Change (taking into account, among other things, Illinois Power's then creditworthiness and any credit support that Illinois Power has agreed to provide after giving effect to such change); a change of control (the definition of which will be agreed upon but will include a limitation on the creation of liens on the equity of HoldCo); and failure of the board of directors of the general partner of HoldCo to include an independent director whose favorable vote is required for the Borrower or HoldCo to commence a voluntary bankruptcy proceeding.

Voting:

Amendments and waivers with respect to the Senior Credit Documentation shall require the approval of Lenders holding more than 50% of the aggregate amount of the Loans and Commitments under the Credit Facilities (the "Required Lenders"), except that (a) the consent of each Lender directly affected thereby shall be required with respect to (i) reductions in the amount or extensions of the scheduled date of amortization or maturity of any Loan, (ii) reductions in the rate of interest or any fee or extensions of any due date thereof and (iii) increases in the amount or extensions of the expiry date of any Lender's commitment and (b) the consent of 100% of the Lenders shall be required with respect to (i) modifications to any of the voting percentages and (ii) releases of all or substantially all of the collateral. In addition, "class" voting requirements shall apply to modifications affecting certain payment matters.

Assignments and Participations:

The Lenders shall be permitted to assign and sell participations in their Loans and commitments, subject, in the case of assignments (other than to another Lender or to an affiliate of a Lender), to the consent of the Administrative Agent (which consent shall not be unreasonably withheld or delayed) and, so long as no event of default shall have occurred and be continuing, the Borrower (which consent shall not be unreasonably withheld or delayed). Non-pro rata assignments shall be permitted. In the case of partial assignments (other than to another Lender or to an affiliate of a Lender), the minimum assignment amount shall be \$1,000,000 unless otherwise agreed by the Borrower and the Administrative Agent. Participants shall have the same benefits as the Lenders with respect to yield protection and

increased cost provisions; provided, that a participant shall not be entitled to receive more than its granting Lender would have been entitled to receive. Voting rights of participants shall be limited to those matters set forth in clause (a) under “Voting” with respect to which the affirmative vote of the Lender from which it purchased its participation would be required. Pledges of Loans to a Federal Reserve Bank shall be permitted without restriction. Promissory notes shall be issued under the Credit Facilities only upon request.

Yield Protection:

The Senior Credit Documentation shall contain customary provisions (a) protecting the Lenders against increased costs or loss of yield resulting from changes in reserve, tax, capital adequacy and other requirements of law and from the imposition of or changes in withholding or other taxes and (b) indemnifying the Lenders for “breakage costs” incurred in connection with, among other things, any prepayment of a Eurodollar Loan (as defined in Annex I) on a day other than the last day of an interest period with respect thereto.

Expenses and Indemnification:

The Borrower shall pay (a) all reasonable out-of-pocket expenses of the Agents and the Joint Lead Arrangers associated with the syndication of the Facilities and the preparation, execution, delivery and administration of the Senior Credit Documentation and any amendment or waiver with respect thereto (including the reasonable fees, disbursements and other charges of counsel) and (b) all out-of-pocket expenses of the Agents and the Lenders (including the fees, disbursements and other charges of counsel) in connection with the enforcement of the Senior Credit Documentation.

The Agents, the Joint Lead Arrangers and the Lenders (and their affiliates and their respective officers, directors, employees, advisors and agents) will have no liability for, and will be indemnified and held harmless against, any losses, claims, damages, liabilities or expenses incurred in respect of the financing contemplated hereby or the use or the proposed use of proceeds thereof, except to the extent they are found by a final, non-appealable judgment of a court to arise from the willful misconduct or gross negligence of the relevant indemnified person or one of its affiliates or of any officer, director, etc., of such person or such affiliate.

Governing Law and Forum:

State of New York.

Counsel to the Administrative  
Agent and Joint Lead Arrangers:

Simpson Thacher & Bartlett



Interest and Certain Fees

Interest Rate Options:

The Borrower may elect that the Loans comprising each borrowing bear interest at a rate per annum equal to:

the ABR plus the Applicable Margin; or

the Eurodollar Rate plus the Applicable Margin;

As used herein:

“ABR” means the higher of (i) the rate of interest publicly announced by the Administrative Agent as its prime rate in effect at its principal office in New York City (the “Prime Rate”) and (ii) the federal funds effective rate from time to time plus 0.5%.

“Applicable Margin” means the applicable rate set forth on Annex III.

“Eurodollar Rate” means the rate (adjusted for statutory reserve requirements for eurocurrency liabilities) for eurodollar deposits for a period equal to one, two, three or six months (as selected by the Borrower) appearing on Page 3750 of the Dow Jones Markets screen.

Interest Payment Dates:

In the case of Loans bearing interest based upon the ABR (“ABR Loans”), quarterly in arrears.

In the case of Loans bearing interest based upon the Eurodollar Rate (“Eurodollar Loans”), on the last day of each relevant interest period and, in the case of any interest period longer than three months, on each successive date three months after the first day of such interest period.

Commitment Fees:

The Borrower shall pay a commitment fee calculated at the rate of 0.50% per annum on the average daily unused portion of the Revolving Facility and the CapEx Facility, payable quarterly in arrears.

Letter of Credit Fees:

A fronting fee equal to 0.25% per annum on the face amount of each letter of credit shall be payable quarterly in arrears to the Issuing Lender for its own account. In addition, customary administrative, issuance, amendment, payment and negotiation charges shall be payable to the Issuing Lender for its own

account.

**Default Rate:**

At any time when the Borrower is in default in the payment of any amount of principal due under the Credit Facilities, such amount shall bear interest at 2.00% above the rate otherwise applicable thereto. Overdue interest, fees and other amounts shall bear interest at 2.00% above the rate applicable to ABR Loans.

**Rate and Fee Basis:**

All per annum rates shall be calculated on the basis of a year of 360 days (or 365/366 days, in the case of ABR Loans the interest rate payable on which is then based on the Prime Rate) for actual days elapsed.

**ESTIMATED SOURCES AND USES TABLE**  
**(in \$ Thousands)**

<b>Sources of Funds:</b>	
New Revolving Credit Facility - OpCo	\$ 0
New Senior Term Facility - OpCo	\$ 135,295
New Senior Term Facility - HoldCo	\$ 74,795
Equity contributions from Equity Investors	<u>\$ 60,500</u>
Total Sources of Funds	<u><u>\$ 270,590</u></u>
<b>Uses of Funds:</b>	
Acquisition Purchase Price	\$ 239,000
Estimated Transaction Costs and Expenses	<u>\$ 31,590</u>
Total Uses of Funds	<u><u>\$ 270,590</u></u>

PRICING GRID

Debt Rating of Opco Facilities	Applicable Margin ABR Loans	Applicable Margin Eurodollar Loans
BBB and Baa2	0.75%	1.75%
BBB- and Baa3	1.00%	2.00%
BB+ and Ba1 or below	1.50%	2.50%

For purposes of the foregoing, if the ratings issued by S&P and Moody's fall within different pricing levels, then the lower of such pricing levels shall apply.